

Legal Frameworks of Pretrial Release

**Right to Pretrial
Release**

**Limitations on
Pretrial Detention**

**Conditions of
Release**

Right to Pretrial Release

The U.S. Supreme Court has held that the vast majority of people arrested are entitled to release before trial.

“In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”

U.S. v. Salerno, 281 U.S. 739 (1987)

Absent a right to pretrial release, “the presumption of innocence... would lose its meaning.”

Stack v. Boyle, 342 U.S. 1 (1951)

Right to Pretrial Release

Why is the presumption of pretrial release so strong?

1. **Physical freedom** is at the core of the Constitution's liberty interests
2. **Presumption of innocence** before trial: The state holds people accountable for past—not future—actions

Limits on Pretrial Detention

- The U.S. Constitution does not directly address when a judge can order someone **detained** before trial.
- But courts have established **limits**, based largely on principles of due process:
 - **Flight** and **public safety** are the only constitutional reasons for detention
 - Detention is a **last resort**—and only permitted when no conditions of release will provide a reasonable assurance that the person will not flee or commit a serious offense
 - Detention is permitted only after **full due process**

Limits on Pretrial Detention

- **Full due process** includes:
 - Representation by counsel
 - A prompt hearing
 - The right to testify on one's own behalf and to examine witnesses
 - The judicial officer using constitutionally and statutorily enumerated factors to determine whether detention is necessary
 - The use of a “clear and convincing evidence” standard
 - Written findings of fact and statement of reasons for any decision to detain
 - The right to expedited appellate review

State Law: Pretrial Release and Detention

- These federal constitutional guarantees establish **general baseline rules** to which courts in all states must adhere.
- But each state sets forth its **own specific criteria** for determining who is entitled to pretrial release, and who judges may consider detaining.

Research: Impacts of Pretrial Detention

- People detained pretrial—even for just a few days—may be more likely:
 - to plead guilty or be convicted
 - to receive harsher sentences: greater likelihood of incarceration, and longer periods in jail or prison
 - to lose jobs, family, or housing
 - to be rearrested both before and after their cases are resolved
 - to fail to appear for court
- In addition, state and county governments spend at least \$14 billion annually detaining people before trial

Pretrial Release Conditions

- For the vast majority of people who are legally entitled to pretrial release, how should a judge set conditions?

Remember: Most people will succeed on pretrial release without any conditions other than a promise to return to court and stay out of legal trouble.

Pretrial Release Conditions

- Two main legal principles:
 - If any conditions are imposed, they must be the **least restrictive necessary** to provide reasonable assurance of court appearance and public safety
 - Any pretrial release conditions must be **individualized**

Financial Release Conditions

- Money is used to detain people in many jurisdictions nationally -- even though it is meant to be a “condition of release.”
- This allows for the detention of many people (often those who are economically disadvantaged) not eligible for detention under state law.
- But this is beginning to change through litigation, legislation, and local policy improvement.

Financial Release Conditions

- Three main legal principles :
 - Financial conditions may not be used to **intentionally detain**
 - **Unaffordable financial conditions** will be subject to increased scrutiny
 - A person's **ability to pay** must be assessed before setting financial conditions

State Law: Pretrial Release Conditions

- These legal principles and research findings establish certain **rules and best practices** for determining pretrial release conditions.
- But states set forth their **own criteria and process** for deciding what, if any, pretrial release conditions are necessary.
- Local jurisdictions and individual judicial officers typically retain **substantial discretion** to set appropriate conditions in any given case.